

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
Amendment of Part 73 of the )  
Commission's Rules to Create a )  
Microstation Radio Broadcasting )  
Service )  
)  
)  
)

Rule Making No.  
MM Docket No.

RM - 9208

To: Chief, Mass Media Bureau

**OPPOSITION TO PETITION FOR RULE MAKING**

Radio One, Inc. (hereinafter "Radio One"), owner and operator of radio stations in the Washington, D.C., Baltimore, Maryland, and Philadelphia, Pennsylvania, markets hereby opposes the Petition for Rule Making (hereinafter "Petition") filed July 17, 1997, by Nickolaus E. Leggett, Judith F. Leggett and Donald J. Schellhardt, Esq. (hereinafter "Petitioners") asking that the Federal Communications Commission amend its rules to create a new microstation radio broadcasting service. By Public Notice released February 5, 1998, the FCC requested that parties file comments on the Petition by March 6, 1998.

Petitioners' proposal to create a new microstation radio broadcasting service should be summarily dismissed. Not only is it unacceptable for filing because it suffers from numerous procedural deficiencies but it proposes an untested scheme

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that will tax the Commission's limited resources. In support of its opposition, Radio One hereby submits as follows.

### SUMMARY OF PROPOSAL

1. Petitioners propose a low power (maximum of one watt/maximum of 50 feet above ground or supporting building structure) AM and FM service nationwide that would target "niche markets" and be supported by advertising revenue. Each microstation would be licensed to operate in a specific location referred to as a "cell" which would serve an area of one to several square miles. Only one AM and one FM microstation would be licensed to each cell. While only one entity would be able to own either the AM or the FM license in each cell, one entity could own up to five licenses nationwide. The licenses would be awarded on a first come first served basis or randomly, if more than one application were filed, rather than by auction. The license period would be five years for a total fee of \$50.

### ARGUMENT

#### *A. Procedural Deficiencies Require That the Commission Dismiss the Petition*

2. The Petition suffers from numerous procedural deficiencies, any one of which would be sufficient to result in a dismissal of the Petition without considering the merits of the proposal. When considered together, they demonstrate the Petitioner's inability to master even basic Commission rules, a failure that does not portend compliance should the Petition be granted and the microstation radio service be authorized.

3. Section 1.401(b) of the Commission's Rules requires that a petition for rule making conform to Sections 1.52 and 1.49 of the rules. The Petition as filed fails to comply with either rule. Section 1.52 requires that a party not represented by counsel "sign and verify the document and state his address". The rule further describes the contents of the verification as a statement that a petitioner "has read the document; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." While one of the Petitioners and signatories, Donald J. Schellhardt, is an attorney, the Petition does not identify him as counsel to the Petitioners. It is apparent that he is acting in his individual capacity and thus the verification required of a petitioner not represented by counsel should have been submitted. This omission is sufficient grounds for the Commission to dismiss the Petition as unacceptable for filing. In the Matter of Amendment of Section 73.202(b), Table of Allotments (Lincoln, Osage Beach, Steeleville and Warsaw, Missouri), 7 FCC Rcd 3015 (Allocations Branch 1992), aff'd, 11 FCC Rcd 6372 (Policy and Rules Division 1996)(counterproposals dismissed without consideration for failure to submit the verification required by Section 1.52).

4. Pursuant to Sections 1.49(b) and (c), any pleading submitted to the Commission which exceeds 10 pages in length is required to have a table of contents and summary. The Petition exceeds 10 pages and does not contain these organizational elements which were designed to streamline the Commission's review

of the thousands of documents that it receives annually. Procedural Rules, 56 RR 2d 1347 (1984)(rules amended to permit staff to analyze and retrieve filings “expeditiously and effectively”).

*B. Petitioners Have Failed to Establish the Demand for a New Microstation Radio Service*

5. Apart from the procedural irregularities described above, there is a third procedural deficiency that is the most disturbing. Section 1.401(c) establishes what information should be contained in a petition to amend the rules. The petition is to set forth the “facts, views, arguments and data deemed to support the action requested”. While the Petition describes the type of service being proposed and the possible program formats that would result, it does not include any supporting materials. There is no data to illustrate that the service described is being demanded by either prospective operators or listeners. There is no data to demonstrate that there would be a sufficient advertising base to support the operation of such a service nationwide. Most startling is the absence from the Petition of any technical data prepared by a qualified engineer addressing the frequencies to be allotted, confirming that there is sufficient spectrum available to create the service or estimating the number of stations that would be created. This lack of technical information is compounded by the Petitioners’ suggestion that the transmitters used in the microstation service not be type-accepted and their admission that the assignment of cells “would not guarantee lack of interference between the microstations.” Petition, at p. 7.

6. As the proponent of a brand new service, it is incumbent upon the Petitioners to offer objective, supporting information. See Section 1.401(c). This the Petitioner has not done. Such a glaring omission suggests that the Petitioner itself is uncertain whether such a service is technically feasible and would be capable of coexisting with the current broadcast frequency scheme and survive. In addition, Petitioners fail to address what rules will govern the microstation service. Will the new service have any obligations to the public? Will political candidates be provided access? Will an applicant be required to demonstrate its financial qualifications or reasonable assurance of a site?

7. What the Petitioners have done is to advance a superficially appealing idea without offering a scintilla of evidentiary support or proposed regulatory framework. It is incumbent upon the Petitioners to address these issues. The Commission should not reward the Petitioners' lack of diligence by using its limited resources to analyze and craft a proposal.

*C. A Microstation Radio Service Will Tax the Commission's Limited Resources*

8. The Petitioners propose that stations with one watt of power be authorized nationwide. Petitioners make no attempt to estimate the number of individual stations that could be authorized. One can speculate that based upon the minimal power proposed that hundreds if not thousands of microstations would be created. It is the Commission's responsibility to investigate and sanction a licensee

that violates the rules. The Commission's responsibility is immense given the thousands of entities licensed to operate. This new service would add significantly to the Commission's burden. Yet, the staff available to investigate and monitor compliance was cut by one-third in fiscal year 1997. Public Notice, Compliance and Information Action, Report No. CI 95-16, released October 13, 1995.

9. The Commission's experience with secondary services foreshadows the problems that could inevitably occur should this new service be inaugurated. The Commission's concern with the competitive impact of the FM translator service on full service broadcasting led to a revision of the rules that are among the toughest in the broadcast service in restricting who may own and operate FM translator facilities. Report & Order, 5 FCC Rcd 7212 (1990). In affirming its decision to amend the rules, the Commission observed that prior rules contributed to the potential for abuse and adversely affected the development of full FM service. Memorandum Opinion & Order, 8 FCC Rcd 5093 (1993).

10. The lesson to be learned from what happened with FM translators is that there is an administrative cost associated with the implementation, monitoring and maintenance of a new service. The Commission is ill-prepared at this juncture to assume this additional responsibility.

11. Finally, the most compelling reason why the Commission should reject Petitioners' proposal for a new microstation service is its recent experience with

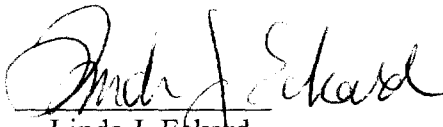
unauthorized operations commonly referred to as “pirate radio stations”. The illegal operation of such facilities has increased dramatically this past year. Most recently, the Commission shut down an unauthorized operation in Puerto Rico which was causing severe interference to air traffic control frequencies. Public Notice, Compliance and Info Action, Report No. CI 98-1, released February 6, 1998.

12. While the microstation radio service would be authorized, and pirate radio stations are not, the parameters of proposed operation could spawn an entire new wave of renegade broadcasters. If a microstation is limited to one watt of power, it will be easy for a person to set up an operation without a license knowing that it will be time consuming for the Commission to pinpoint the station’s operation and shut it down. Second, the \$50 fee for a five-year license suggested by Petitioners is such an insignificant investment that it will neither cover the Commission’s expenses to process applications nor deter those whose motives are inconsistent with the purpose of the service. Third, Petitioners propose that those holding microstation licenses who fail to comply with the rules be granted two additional opportunities to demonstrate compliance. Offering such protection to licensees of microstations would merely encourage a lax attitude and provide an incentive to violate the rules without fear of real punishment.

13. Certainly, the Commission should consider implementing a new service if it is technically feasible and will serve the public interest. Petitioners’ proposal is fraught with potential problems and is utterly devoid of supporting factual

information. For these reasons, Radio One, Inc., respectfully requests that the Commission dismiss the Petition.

RADIO ONE, INC.

By:   
Linda J. Eckard  
General Counsel

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March 6, 1998



**CERTIFICATE OF SERVICE**

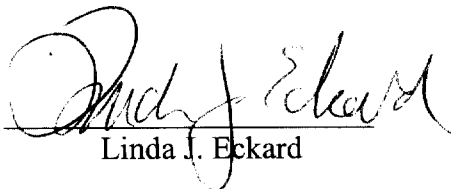
I, Linda J. Eckard, General Counsel of Radio One, Inc., hereby certifies that a true and correct copy of the foregoing Opposition to Petition for Rule Making was sent this 6th day of March, 1998, by first-class mail, postage prepaid, to the following:

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